

IN THE SUPREME COURT OF CALIFORNIA

HOWARD JARVIS TAXPAYERS)	
ASSOCIATION et al.,)	S082591
)	
Plaintiffs and Appellants,)	Ct.App. 4/3 G020573
)	
v.)	Orange County
)	Super. Ct. No. 761512
CITY OF LA HABRA et al.,)	
)	ORDER MODIFYING OPINION
Defendants and Respondents.)	[NO CHANGE IN JUDGMENT]
_____)	

BY THE COURT:

The opinion herein, appearing at 25 Cal.4th 809, is modified as follows:

(1) The first sentence of the second paragraph at 25 Cal.4th at page 812, is modified by replacing the language “we conclude, that is, that the City’s continued imposition and collection of the tax” with “we conclude that if, as alleged, the tax is illegal, its continued imposition and collection,” so that the sentence reads as follows: “We agree with plaintiffs’ second contention; we conclude that if, as alleged, the tax is illegal, its continued imposition and collection is an ongoing violation, upon which the limitations period begins anew with each collection.”

(2) Footnote 3 at 25 Cal.4th at page 820 is modified to read as follows:

“An action for refund of an illegally collected tax must generally be brought within a specified time after the tax is paid and an administrative claim denied. (See, e.g., Rev. & Tax. Code, §§ 5097, 5141 [property tax: claim must be made within four

years after payment; action within six months after claim rejected]; *id.*, §§ 6902, 6933 [sales tax: claim within three years of end of payment period; action within 90 days of disallowance].) The parties have not cited, and our research has not disclosed, any such Revenue and Taxation Code provision governing local utility taxes. Because plaintiffs here do not seek refunds, we need not decide what claims procedures and limitations period would apply to such a claim. (See Ord., § 18 [providing a three-year period, running from the date of payment, for refunds or credits to the service supplier (which must then refund or credit the customer) for taxes ‘illegally collected or received’]; but see Pub. Util. Code, § 799 [providing, as to local utility taxes, that the service supplier is not liable to customers for refunds and may not be named a party in an action for a refund of the tax]; *Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48, 60-63 [holding limitations period in Government Code section 945.6 applies to a refund claim for local tax that is not governed by the Revenue and Taxation Code or other statute].)”

The modification does not affect the judgment.